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indirectly from any act by armed forces engaged in combat.

(c) Any claim for reimbursement of medical, hospital, or burial expenses to the extent already paid by the U.S. Government.

(d) Any claim cognizable under:

(1) Military Personnel and Civilian Employees' Claims Act, as amended. 31 U.S.C. 3721.

(2) Foreign Claims Act. 10 U.S.C. 2734.

(3) 10 U.S.C. 7622, relating to admiralty claims. See part 752 of this Chapter.

(4) Federal Tort Claims Act. 28 U.S.C. 2671, 2672, and 2674-2680.

(5) International Agreements Claims Act. 10 U.S.C. 2734a and 2734b.

(6) Federal Employees' Compensation Act. 5 U.S.C. 8101-8150.

(7) Longshore and Harbor Workers' Compensation Act. 33 U.S.C. 901-950.

(e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in § 750.43(b) (2) and (3)].

(f) Any claim for rent of real or personal property [except as provided in § 750.43(b) (2) and (3)].

(g) Any claim involving infringement of patents.

(h) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel.

(i) Any claim by a national, or corporation controlled by a national, of a country in armed conflict with the United States, or an ally of such country, unless the claimant is determined to be friendly to the United States.

(j) Any claim for personal injury or death of a member of the Armed Forces or civilian employee incident to his service. 10 U.S.C. 2733(b)(3).

(k) Any claim for damage to or loss of bailed property when bailor specifically assumes such risk.

(l) Any claim for taking private real property by a continuing trespass or by technical trespass such as overflights of aircraft.

(m) Any claim based solely on compassionate grounds.

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(n) Any claim to which the exceptions in 28 U.S.C. 2680 apply.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53420, Sept. 19, 2007]

### § 750.45 Filing claim.

(a) *Who may file.* Under the MCA, specifically, the following are proper claimants:

(1) U.S. citizens and inhabitants.

(2) U.S. military personnel and civilian employees, except not for personal injury or death incident to service.

(3) Persons in foreign countries who are not inhabitants.

(4) States and their political subdivisions (including agencies).

(5) Prisoners of war for personal property, but not personal injury.

(6) Subrogees, to the extent they paid the claim.

(b) *Who may not file.* (1) Inhabitants of foreign nations for loss or injury occurring in the country they inhabit.

(2) U.S. Government agencies and departments.

(c) *When to file/statute of limitations.* Claims against the DON must be presented in writing within 2 years after they accrue. In computing the 2 year period, the day the claim accrues is excluded and the day the claim is presented is included. If the incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, an MCA claim, on good cause shown, may be presented within 2 years after the war or armed conflict is terminated. For the purposes of the MCA, the date of termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President. See 10 U.S.C. 2733(b)(1).

(d) *Where to file.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if it is known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Office of the Judge Advocate General of the Navy, (Claims and Tort Litigation), 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard, DC 20375-5066.

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(e) *Claim form.* A claim is correct in form if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, with a claim for money damages in a sum certain. A Standard Form 95 is preferred. A claim should be substantiated as discussed in section 750.27 of this part. A claim must be substantiated as required by this Part in order to be paid. See 10 U.S.C. 2733(b)(5).

(f) *Amendment of claim.* A proper claim may be amended by the claimant at any time prior to final denial or payment of the claim. An amendment shall be submitted in writing and signed by the claimant or a duly authorized agent or legal representative.

(g) *Payment.* Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. If the Secretary of the Navy considers that a claim in excess of \$100,000.00 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and § 750.43, he may make a partial payment of \$100,000.00 and refer the excess to the General Accounting Office for payment from appropriations provided therefore.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53420, Sept. 19, 2007]

### § 750.46 Applicable law.

(a) *Claims arising within the United States, Territories, Commonwealth, and Possessions.* The law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory or comparative negligence on claimant's right of recovery.

(b) *Claims within foreign countries.* (1) Where the claim is for personal injury, death, or damage to or loss or destruction of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment, liability of the United States will be assessed under general principles of tort law common to the majority of American jurisdictions.

(2) Apply the law of the foreign country governing the legal effect of con-

tributory or comparative negligence by the claimant to determine the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, apply traditional rules of contributory negligence. Apply foreign rules and regulations on operation of motor vehicles (rules of the road) to the extent those rules are not specifically superseded or preempted by U.S. Armed Forces traffic regulations.

(c) *Principles applicable to all MCA claims.* (1) "Scope of employment" is determined in accordance with Federal law. Reported FTCA cases provide guidance on this determination;

(2) Claims for emotional distress will be considered only from the injured person or members of the injured person's immediate family. Claims from the injured person's immediate "zone of danger" (i.e., immediate vicinity of the incident) and the claimant substantiates the claim with proof of the physical manifestation(s) of the emotional distress; and

(3) Claims under the MCA do not include the principles of absolute liability and punitive damages.

(d) *Clarification of terms.* Federal law determines the meaning and construction of the MCA.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53420, Sept. 19, 2007]

### § 750.47 Measure of damages for property claims.

Determine the measure of damages in property claims arising in the United States or its territories, commonwealth, or possessions under the law of the place where the incident occurred. Determine the measure of damages in property claims arising overseas under general principles of American tort law, stated as follows:

(a) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to substantially restore the property to the condition that existed immediately prior to the incident. Damages shall not exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the